

No. 07-4100

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

FEB 20 2008

ISADORE GENNINGS,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

LEONARD GREEN, Clerk

ORDER

A TRUE COPY

Attest:

LEONARD GREEN, Clerk

By [Signature]
Deputy Clerk

1:01CR09-03

08 FEB 21 PM 1:06

FILED
JAMES BONINI
CLERK

Isadore Gennings, a pro se federal prisoner, appeals from a district court judgment denying his motion to vacate his sentence filed under 28 U.S.C. § 2255. In that order, the district court also denied Gennings a certificate of appealability (COA) and Gennings has now applied for a COA to appeal. Fed. R. App. P. 22(b). Gennings also moves for in forma pauperis (IFP) status and for an extension of time to file his application for a COA.

Following a jury trial, Gennings was found guilty of conspiracy to distribute a controlled dangerous substance in violation of 21 U.S.C. § 846; interstate travel in aid of racketeering in violation of 21 U.S.C. § 1952; and possession with intent to distribute a controlled dangerous substance in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2. Initially, Gennings pleaded not guilty to all counts, but subsequently pleaded guilty pursuant to a plea agreement. After the district court granted his motion to withdraw his plea, Gennings pleaded not guilty, once more, and his case went to trial. Prior to trial, the government filed an information, pursuant to 21 U.S.C. § 851(e), alleging that Gennings had a prior narcotics-related felony which subjected him to the possibility of an

No. 07-4100

- 2 -

enhanced sentence. On March 19, 2002, Gennings was sentenced to 240 months of imprisonment, the mandatory minimum under the advisory guidelines for the convictions.

On appeal, this court affirmed the convictions, but remanded for reconsideration of whether Gennings could establish the elements of the "safety valve" provision found in § 5C1.2 of the sentencing guidelines. *United States v. Gennings*, 95 F. App'x 795 (6th Cir. 2004). On remand, the district court conducted an evidentiary hearing and determined that Gennings was not entitled to the sentencing benefits of the "safety valve" provision. On appeal after remand, this court affirmed the district court's order, agreeing with the district court that: 1) Gennings had not met the fifth criterion under § 5C1.2 to be entitled to a downward departure; and 2) the defendant's second argument lacked merit, specifically that his sentence was based upon a prior conviction that was not found beyond a reasonable doubt by a jury.

On April 4, 2007, Gennings filed the motion to vacate sentence at issue herein, alleging eight different instances in which he was denied effective assistance of counsel in violation of his Sixth Amendment rights. The district court considered each of the claims and denied the motion to vacate and also denied Gennings an application for a COA.

In support of his application for a COA, Gennings presents the following four arguments: 1) the district court erred in denying him a COA before he requested one; 2) he is entitled to be re-sentenced under *United States v. Booker*, 543 U.S. 220 (2005), because the court relied on a prior felony drug conviction in sentencing him that was substantiated in the record only by a county criminal docket sheet; 3) he was denied effective assistance of counsel at trial and on appeal and the district court should have granted an evidentiary hearing on his ineffective assistance of counsel claims; and 4) he was denied due process when the district court denied his § 2255 motion without an evidentiary hearing.

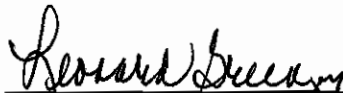
We deny a COA because Gennings has not demonstrated that jurists of reason would find it debatable whether the district court was correct in its ruling. 28 U.S.C. § 2253(c)(2), *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

No. 07-4100

- 3 -

Accordingly, the motion for a COA is denied, and the motions for IFP and for an extension of time to file a COA application are denied as moot.

ENTERED BY ORDER OF THE COURT


Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: February 20, 2008

Mr. Gregory G. Lockhart
U.S. Attorney's Office
221 E. Fourth Street
Suite 400 Atrium Two Building
Cincinnati, OH 45202-0000

Isadore Gennings
Federal Correctional Institution
P.O. Box 1000
Loretto, PA 15940

Re: No. 07-4100, *Gennings v. USA*
Originating Case No. 07-00272

Dear Counsel,

The Court issued the enclosed Order today in this appeal.

Sincerely yours,

s/Florence P. Ebert
Case Manager
Direct Dial No. 513-564-7026
Fax No. 513-564-7098
CA06-Team2@ca6.uscourts.gov

cc: Honorable S. Arthur Spiegel
Mr. James Bonini

Enclosure

James Bonini
Southern District of Ohio at Cincinnati
100 E. Fifth Street
Suite 103 Potter Stewart U.S. Courthouse
Cincinnati, OH 45202-0000
